

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,	)	Civil Action No.
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MENNINO PLACE LP, CATCH	)	
NEIGHBORHOOD HOUSING,	)	
MB MANAGEMENT COMPANY LLC,	)	
and GERALD WALSH,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

The United States of America alleges as follows:

**NATURE OF THE ACTION**

1. This action is brought by the United States to enforce provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 (“the Fair Housing Act”).

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o).

3. Venue is proper under 28 U.S.C. § 1391(b), because the claims alleged herein arose in the District of New Hampshire.

**DEFENDANTS AND THE SUBJECT PROPERTY**

4. Defendant MENNINO PLACE LP, is a New Hampshire limited partnership that owns Mennino Place, a 45-unit apartment building in Concord, New Hampshire. Mennino Place is an

affordable rental community that was opened for first occupancy in 2011. Mennino Place was constructed using Low Income Housing Tax Credits provided through the United States Department of Treasury.

5. Defendant CATCH NEIGHBORHOOD HOUSING (“CATCH”) is a non-profit provider of housing services in Merrimack County. CATCH receives federal funding through the United States Department of Housing and Urban Development (“HUD”). CATCH oversees the operation of Mennino Place.

6. During all times relevant to this lawsuit, Defendant MB MANAGEMENT COMPANY LLC (“MB Management”) acted as an agent of CATCH in managing the operation of Mennino Place.

7. During all times relevant to this lawsuit, Defendant GERALD WALSH was the Independent Multi-Site Manager employed by MB Management with responsibility for managing Mennino Place.

### **FACTUAL ALLEGATIONS**

8. In or about November 2011, Cathy Wyrenbeck leased and began to occupy a one-bedroom unit at Mennino Place.

9. Each apartment at Mennino Place is cooled during the summer months by a floor air conditioning unit provided by Defendants.

10. Ms. Wyrenbeck has been diagnosed with chronic urticarial resulting from an autoimmune disorder. This condition causes Ms. Wyrenbeck to break out in hives, and the condition is exacerbated by heat. Ms. Wyrenbeck takes medication to treat this condition. Because of this condition, Ms. Wyrenbeck is substantially limited in her ability to sit or stand for extended periods of time. She is also substantially limited in her ability to work.

11. Ms. Wyrenbeck is a person with a disability within the meaning of the Fair Housing Act.

12. On or about June 21, 2012, Ms. Wyrenbeck called MB Management and orally informed them that the floor air conditioning unit was insufficient to cool her apartment to a temperature that would not cause the exacerbation of her chronic urticarial. Ms. Wyrenbeck requested to rent a second portable floor air conditioning unit from management.

13. On or about June 22, 2012, Ms. Wyreneck again called MB Management. During this conversation, MB Management informed Ms. Wyrenbeck that they did not have an extra portable floor air conditioning unit available for Ms. Wyrenbeck to rent, and that if she wanted a second unit, she would have to purchase it herself.

14. On July 2, 2012, Ms. Wyrenbeck informed MB Management, both orally and in writing, that she needed a second air conditioning unit to cool her apartment because of her skin condition and requested that she be allowed to install a window air conditioning unit that she already owned. MB Management told Ms. Wyrenbeck that the use of window air conditioning units was not permitted at Meninno Place, and that if she was requesting this as a reasonable accommodation, Ms. Wyrenbeck would need to complete a request for a reasonable accommodation form.

15. Sometime between July 2 and 8, 2012, Ms. Wyrenbeck installed her window air conditioning unit in the living room window of her apartment.

16. On July 8, 2012, Counsel for the Defendants provided Ms. Wyrenbeck with the Defendants' reasonable accommodation policy and forms for her and her doctor to complete.

17. By July 16, 2012, Defendants had received all completed reasonable accommodation forms from Ms. Wyrenbeck and her treating dermatologist.

18. On August 2, 2012, Ms. Wyrenbeck contacted Defendant Gerald Walsh to discuss the status of her reasonable accommodation request. During that conversation, Defendant Walsh informed

Ms. Wyrenbeck that the window air conditioning unit she had installed in her living room window was in violation of her lease.

19. By letter dated August 8, 2012, Defendant Walsh informed Ms. Wyrenbeck that “the air conditioning unit currently installed in the window is a violation of your lease agreement...As per our conversation, you would contact this office when the window unit is removed.”

20. In September 2012, Ms. Wyrenbeck removed her window air conditioning unit from her living room window.

21. On May 1, 2013, Defendants provided Ms. Wyrenbeck with a second portable floor air conditioning unit.

### **PROCEDURAL ALLEGATIONS**

22. On August 17, 2012, Ms. Wyrenbeck filed a complaint of discrimination with HUD, pursuant to 42 U.S.C. § 3610(a). HUD investigated this complaint as a possible violation of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, et seq. ("Section 504").

23. Pursuant to 42 U.S.C. § 3610(a) and (b), and 29 U.S.C. § 794, the Secretary of HUD investigated Ms. Wyrenbeck’s complaint, attempted conciliation without success, and prepared a final investigative report and a letter of findings. Based on the information gathered in the course of this investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause existed to believe that Defendants violated the Fair Housing Act by refusing to make a reasonable accommodation. Accordingly, on February 25, 2013, pursuant to 42 U.S.C. § 3610(g)(2)(A), the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination against the Defendants.

24. On March 15, 2013, Ms. Wyrenbeck timely elected to have the Fair Housing Act charge resolved in a federal civil action, pursuant to 42 U.S.C. § 3612(a) of the Fair Housing Act.

25. The Secretary of HUD subsequently authorized the Attorney General to file this action on behalf of Cathy Wyrenbeck, pursuant to 42 U.S.C. § 3612(o) of the Fair Housing Act.

### **CLAIM FOR RELIEF**

#### **Violation of the Fair Housing Act**

1. The United States re-alleges and incorporates by reference the allegations set forth in paragraphs 1-25, supra.

2. By the actions and statements referred to in the foregoing paragraphs, Defendants have refused to make a reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to afford a person with disabilities equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. §§ 3604(f)(2) and 3604(f)(3)(B).

3. Cathy Wyrenbeck has suffered damages as a result of Defendants' actions and is an "aggrieved person" pursuant to 42 U.S.C. § 3602(i).

4. Defendants' actions, as set forth above, were intentional, willful and/or taken in reckless disregard for the rights of an individual with a disability.

WHEREFORE, the United States prays that this Court enter an order that:

1. Declares that Defendants' actions, policies and practices, as alleged herein, violate the Fair Housing Act;

2. Enjoins Defendants, their agents, employees and successors, and all other persons in active concert or participation with them, from

a. discriminating on the basis of disability;

- b. refusing to make reasonable accommodations in rules, policies, practices, or services as required by the Fair Housing Act; and
- c. failing or refusing to take such steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendants' unlawful housing practices.

- 3. Awards monetary damages, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1), to

Cathy Wyrenbeck.

The United States further prays for such additional relief as the interests of justice may require.

Dated: June 21, 2013

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